

VIRGINIA CODE COMMISSION

Wednesday, May 14, 2008 – 10 a.m.

General Assembly Building, 6th Floor

Speakers Conference Room

Richmond, Virginia 23219

MEMBERS PRESENT: R. Steven Landes, Chairman; John S. Edwards; Ryan McDougle; Thomas M. Moncure, Jr.; Robert L. Calhoun; Frank S. Ferguson; E.M. Miller, Jr.

MEMBERS ABSENT: James F. Almand; Judge Cleo E. Powell

OTHERS PRESENT: Leslie Ostrander and Anders Ganten, LexisNexis.

STAFF PRESENT: Alan Wambold, Frank Munyan, Jane Chaffin

CALL TO ORDER

Delegate Landes called the meeting to order at 10:00 a.m.

APPROVAL OF MINUTES

Mr. Miller made a motion to approve the minutes of the November 28, 2007, meeting as written. Senator McDougle seconded the motion and the motion was approved.

LEGISLATIVE UPDATE

Jane Chaffin reported that the Code Commission recommended two bills for introduction into the 2008 General Assembly Session. The Title 3.1 recodification bill (House Bill 1331) was passed by both houses and approved by the Governor. At the request of DLS, the Governor made technical amendments to the bill, which were approved by the General Assembly.

House Bill 1372, which repealed § 3.1-610.19 relating to the inspection of honey houses, also passed and was signed by the Governor. This bill is related to the Title 3.1 recodification legislation; however, the Commission felt the change was substantive enough to warrant separation from the title revision.

The Chair indicated that the Pesticide Control Board had complained about not being kept apprised of title revision changes that impacted the Board. The Virginia Department of Agriculture and Consumer Services, which provides staff support to the Pesticide Control Board, was an integral part of the revision process; however, it appears that the department staff did not adequately advise the Pesticide Control Board about changes affecting that Board. Delegate Landes asked staff to draft a letter to the Department of Agriculture and Consumer Services for his signature concerning the Code Commission's disappointment that department staff did not request input from the Pesticide Control Board on changes that affected the Board and to stress the importance that all affected parties be properly notified when title revisions are undertaken.

**REQUEST TO CROSS REFERENCE APPLICABLE PUNISHMENT STATUTES
UNDER RECKLESS DRIVING AND SEX OFFENSE STATUTES**

Alan Wambold referred to a letter dated May 8, 2008, from Richard Claybrook, Deputy Commonwealth's Attorney for the City of Harrisonburg and Rockingham County. In his letter, Mr. Claybrook is requesting the Code Commission to consider adding editor's notes under the reckless driving statutes that cross reference relative punishment statutes. Similarly, Mr. Claybrook would like the Commission to arrange for editor's notes to be added under the sex offenses statutes that cross reference applicable punishment statutes. He indicates that with the number of penalties listed throughout the code it is difficult to find which penalties go with the offenses.

Mr. Wambold stated that, with respect to the motor vehicle code, if penalties were repeated after each offense, it would not be unreasonable to expect the code volume to expand into two volumes.

After discussion, the consensus of the Commission is to continue current practice of adding penalties in one place, usually at the end of a chapter, so that the penalties are listed only once. The most recent title revision completed by the Commission was handled in this way.

Staff was asked to draft a response to Mr. Claybrook that indicates that the Code Commission believes that setting a precedent of cross referencing penalties under each offense in the Code is overly burdensome and would unduly expand the size of the Code. However, the Commission suggested that Mr. Claybrook might wish to approach the Virginia Association of Commonwealth's Attorneys or Commonwealth's Attorneys Services Council about developing a separate list of offenses with associated penalties for use by all Commonwealth's attorneys.

RICHMOND METROPOLITAN AUTHORITY

Mr. Wambold addressed the Commission regarding the need for making housekeeping changes to the Richmond Metropolitan Authority (RMA) charter. His concerns arose when he was drafting legislation for a member of the General Assembly that would revise the composition of the RMA board. During his review of the entire charter, Mr. Wambold found a number of antiquated provisions, such as multiple references to the Richmond-Petersburg Turnpike Authority, state highway commission, and hustings court of the City of Richmond.

The charter was originally enacted in 1966 as part of former Title 33. In 1970, Title 33 was revised to Title 33.1. During the title revision process, a decision was made to retain the chapter dealing with the Richmond Metropolitan Authority as a portion of Title 33, even though the remainder of the title was repealed. The end result is that the charter is carried by reference in Title 33.1, but the text is not set out.

In recent years, this type of charter has been codified. For example, the Northern Virginia Transportation Authority is contained in Title 15.2 and the Hampton Roads Transportation Authority is in Title 33.1.

Mr. Wambold suggests that he draft a revision of the RMA charter as either an uncodified act similar to the Washington Metropolitan Area Transit Authority or as a codified act in Title 15.2 or 33.1. Senator Calhoun advised that the RMA should be drafted as part of Title 15.2 because of the board's composition.

Mr. Ferguson made a motion to authorize staff to draft a bill for the 2009 General Assembly session that will add the RMA charter into Title 15.2 and to make nonsubstantive changes to adequately update obsolete and antiquated provisions currently contained in the charter. Senator Calhoun seconded the motion and the motion was approved.

CODE OF VIRGINIA INTRODUCTORY MATERIAL

Mr. Moncure referred to the Code of Virginia introductory materials in the members' notebooks. He explained that the current material is markedly dated and redundant and has rewritten the information to be more useful. Mr. Moncure recommends removal of the 1948 report of the Commission on Code Recodification; however, suggests adding the following new elements: a listing of past and current Code Commission members, the history of the seal of Virginia, and why Virginia is referred to as a Commonwealth instead of a state. Senator Calhoun asked if reference should be made to the electronic versions of the various Virginia laws, including the Virginia Administrative Code. Mr. Moncure responded that a link to the Code Commission website, which will direct the user to the statutory code and administrative regulations, is included at the end of the Foreword.

Mr. Miller asked if West could publish this material as part of the West's Annotated Code of Virginia if West wanted to do so. The consensus of the Commission is that the material is in the public domain.

A question regarding whether the introductory material would be included in the new unnumbered Constitutions volume or in Volume 1 arose. It was determined that the material would be placed at the beginning of Volume 1.

CODE OF 1819

Mr. Moncure stated that the Code of 1819 has historical significance because it is the first legislatively adopted recodification that comes close to anything the Commission does in modern context. At the last meeting, Lexis offered to look into the feasibility of producing a facsimile publication of the two-volume Code of 1819. Mr. Moncure has looked at a variety of publishers and would like to have it published and distributed among the legislators. In response to Senator Calhoun's inquiry regarding marketability, Mr. Moncure stated that the market for this document is expected to be limited. There was an expression of interest by the Commission in this matter, but a general feeling that more information is needed in order to make an informative decision.

Mr. Ferguson made a motion to ask Lexis to continue looking into the feasibility of producing a facsimile publication of the Code of 1819 and to advise the Commission of its findings before the Commission makes a decision. Senator Calhoun seconded the motion and the motion was approved.

VIRGINIA REGISTER PRINTING AGREEMENT

Mr. Miller advised the Code Commission of the upcoming expiration of the Virginia Register printing agreement between Lexis and the Code Commission. He stated that the Register was published inhouse from 1984 through mid-2003. In 2003, the Commission entered into a five-year contract with Weil Publishing to print the Register. Weil was acquired by LexisNexis and the Register is now printed by LexisNexis. The number of subscribers continues to drop and is currently at 135 paid subscribers. The only complaints have been the lateness of the arrival of the document. The agreement allows for a two-year extension of the contract.

Mr. Ferguson made a motion to exercise the option to renew the Virginia Register printing contract for two years, and during the two-year period to evaluate whether there is a legitimate need to retain the paper volume or to rely on the already official online version of the Virginia Register. Senator Edwards seconded the motion and the motion was approved.

REVISION OF TITLE 6.1, BANKING AND FINANCE

Frank Munyan stated that, at the October 2007 meeting, a work plan was presented for the revision of Title 6.1. At that time, one concern expressed by the Commission was whether the composition of the work group should be expanded to include representatives of credit and savings institutions. To address this concern, an inquiry was sent to potentially interested parties and Mr. Munyan received several letters of interest. These individuals have been added to a mailing list that will receive materials at the same time as the work group to give them an opportunity to provide input.

Another accomplishment in October was approval of the title revision outline. Since that time, the work group has revised the outline by adding a chapter in Subtitle I concerning certain lending practices and adding Subtitle IV, which contains those activities not required to be regulated by State Corporation Commission.

The revised outline contains 23 chapters in proposed Title 6.2, and two chapters (Consumer Real Estate Settlement Protection Act and Real Estate Settlement Agent Registration Act) from Title 6.1 being moved to Title 55. Senator Calhoun suggested notifying Martin Johnson with the Real Estate Association and the Real Estate Section of the State Bar about moving these two chapters into Title 55.

Nine of the 15 chapters that have been drafted have been sent out to the mailing list and work group. Five chapters will be presented today.

In proposing revisions to text, Mr. Munyan has tried to simplify language and substitute commonly used terms for outdated language. There is a question about the desired style of the term "attorney's fees," "attorneys' fees," or "attorney fees." Mr. Munyan understands that a decision was made at the time of the 2007 Code Reorganization on how to draft a number of terms, including this one. Staff will check to confirm the Code Commission's decision on this issue. Leslie Ostrander with LexisNexis offered to check with the editorial department to see how the term is used in other states.

158 Four of the five chapters to be presented today are in Subtitle III (nondepository
159 institutions), starting with industrial loan associations.

160 Chapter 14, Industrial Loan Associations

161 Mr. Munyan indicated that the first question that arose was whether to place industrial
162 loan associations under nondepository or depository institutions, which then raises the
163 question as to whether they can accept deposits. Mr. Munyan explained that these
164 associations are the places industrial classes can go for loans. Currently, five of these
165 associations are operating in Virginia and all were incorporated prior to 1960. In 1958 the
166 General Assembly passed a resolution creating a joint subcommittee to study industrial
167 loan associations because they were getting into competition with banks. In 1966 the
168 Code Commission recodified Title 6, and repealed sections in the industrial loan
169 association provisions relating to issuance of authority to industrial loan associations.
170 Currently, there are provisions that deal with revocation of authority to transact business
171 for industrial loan authorities, but there is no provision for granting a new certificate of
172 authority. Any industrial loan associations incorporated after 1960 must comply with
173 requirements for being a bank.

174 Mr. Munyan stated that he rewrote § 6.1-228 (§ 6.2-1405, page 3, lines 76-78) to reflect
175 that Virginia law no longer enables new industrial loan associations to be created and
176 moved § 6.1-230 (what associations may become banks) into this section as subsection B
177 (page 4, lines 79-80). The Commission discussed the amendments and Mr. Ferguson
178 made a motion, seconded by Senator Edwards, to return the section to its existing form
179 and to add language prohibiting associations from granting new certificates of authority.
180 The motion was approved.

181 At 12:05 p.m., the members broke for lunch.

182 The Commission reconvened at 12:40 p.m.

183 In reference to subdivision A 1 of § 6.2-1407 (§ 6.1-232), Mr. Munyan queried whether it
184 is appropriate to retain the prohibition on advertising that an association is subject to
185 regulation or supervision by the State Corporation Commission since they are subject to
186 such regulation and supervision. The Commission agreed that the provision should be
187 removed. Mr. Ferguson made a motion, seconded by Senator Calhoun, to strike
188 subdivision A 1 of § 6.2-1407 on lines 117-119 of page 5. The motion was approved.

189 In § 6.2-1413 (§ 6.1-237.3), Mr. Munyan explained that the stricken language on line 256
190 is based on the fact that another chapter authorizes delegation of duties and it is not
191 necessary to include it in this section.

192 Since there are references to "Rules of Practice and Procedure of the Commission"
193 throughout the title and the directive for the State Corporation Commission to adopt these
194 rules is found in Title 12.1, the consensus of the Commission is to add a titlewide
195 definition so the rules can be referenced in an abbreviated form.

Chapter 18, Money Order Sellers and Money Order Transmitters

In § 6.2-1801 (§ 6.1-371), lines 45 and 46, the Commission asked staff to add the clarifying phrase, "authorized on behalf of licensee" to the exception from the licensing requirement.

The Commission requested that staff change the phrase "is of the opinion" to "determines" in subsection A of § 6.2-1806 (§ 6.1-374).

Chapter 19, Agencies Providing Debt Management Plans

Mr. Munyan explained that the revised chapter title reflects that the chapter regulates the provision of debt management plans rather than any credit counseling that is provided to consumers. For distinction, a credit counselor is an employee of someone who prepares debt management plans. Senator Edwards is concerned that changing the name might be confusing to those familiar with the term "credit counseling." No motion was made to return the title to its previous form.

Senator Calhoun commented that a 501(c)(3) organization might offer, among other things, assistance with money management skills. He asked if this statute would apply only if the assistance was offered for compensation. Mr. Munyan replied that, under the definition, as long as you are not handling the money, you are not covered by this chapter.

The Commission asked Mr. Munyan to check references to "civil penalties" and "civil fines" and consistently use one term.

The Chair thanked Mr. Munyan and advised that the Commission would continue with the remaining chapters at the next meeting.

VIRGINIA ADMINISTRATIVE CODE

Price Increase Request

Jane Chaffin presented a request for an administrative code price increase on behalf of West. As allowed under the Virginia Administrative Code contract, West is requesting a price increase of 7.5% for the Virginia Administrative Code printed sets, supplements and volumes. The request is based on the 7.6% increase in the Producer Price Index for Book Publishing from January 2006 to January 2007.

	Current Price State	7.5% Increase State	Current Price Public	7.5% Increase Public
Set w/o binders	\$184.50	\$197.50	\$303.00	\$324.00
Set w binders	257.00	275.00	442.00	473.00
Pamphlet sold separately w/o binder	23.75	25.50	27.50	29.50
Pamphlet sold separately w binder	29.00	31.00	34.25	36.50
Semiannual Supp, Set	46.00	49.00	79.00	84.50
Semiannual Supp, Pamphlet	12.00	12.75	14.00	15.00

Senator Edwards made a motion, seconded by Senator Calhoun, to approve the increase.

The motion was approved.

227 Replacement Volume Proposal

228 Lilli Hausenfluck presented a proposal to replace three volumes (Volumes 6, 10 and 17)
229 of the Virginia Administrative Code in fall 2008 and one volume (Volume 1) in spring
230 2009. Volume 1, when replaced, will include appropriate Code of Virginia references
231 updated based on the recodification of Title 3.1 of the Code of Virginia. Senator
232 Edwards made a motion, seconded by Senator Calhoun, to approve the proposal as
233 presented. The motion was approved.

234 Contract Expiration

235 Mr. Miller mentioned that the Virginia Administrative Code contract with West expires
236 at the end of this year on December 31, 2008. The contract may be extended for an
237 additional four years. Mr. Miller is not aware of any interest from any other publisher in
238 publishing the print edition of the Virginia Administrative Code. Staff will follow up with
239 West and bring a recommendation before the Commission at a future meeting.

240 **PUBLIC COMMENT**

241 No one came forward during the designated public comment period.

242 **OTHER BUSINESS AND ADJOURNMENT**

243 There being no further business to come before the Commission, the meeting adjourned
244 at 2:11 p.m.